IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 927, 928, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1376, 1377 and 2430 of 2013
&
Writ Appeal Nos. 87 and 1593 of 2014
&
Civil Miscellaneous Appeal No. 1342 of 2017
&
Civil Miscellaneous Appeal Nos. 77, 82 and 86 of 2021

W.A. No. 927 of 2013

1. The Under Secretary (Customs)
Government of India
Ministry of Finance
Department of Revenue
North Block, New Delhi

2. The Chairman
Central Board of Excise & Customs
Government of India
Department of Revenue
Ministry of Finance, North Block
New Delhi

3. The Chief Commissioner of Customs
Central Board of Excise & Customs
North Block, New Delhi

4. The Deputy/Assistant Commissioner of
Customs (Refunds)
Refunds Section
Chennai Sea Customs
Rajaji Salai, Chennai - 600 001 .. Appellants

Versus

Parmar International
rep. by its Managing Director
Rohit Popotlal Parmar
No.31, Shree Adinath Shopping "Centre
Pune-Satara Road
Pune - 411 037
Maharashtra State .. Respondent

W.A. No. 927 of 2013:- Appeal filed under Clause 15 of Letters Patent against the Order dated 21.01.2013 passed in W.P. No. 34478 of 2012 on the file of this Court.

For Appellants	:	Mr. V.Sundareswaran Standing Counsel
For Respondent	:	Mr. B.Sathis Sundar

COMMON JUDGMENT

[Judgment of the Court was delivered by **R.MAHADEVAN,J.**]

Heard all the parties and perused the materials placed before this court.

2.The challenge made in the writ appeals is to the orders dated 21.01.2013 passed in the writ petitions, in and by which, the learned Judge quashed paragraph 4.3 of the Circular No.6/2008-Customs, dated 28.04.2008 insofar as it seeks to restrict or obliterate the claim of interest on belated refunds granted in terms of Notification No.102/2007-Customs, dated 14.09.2007 and consequently, directed the authority concerned to consider the refund applications in the light of sections 27 and 27A of the Customs Act, 1962.

3.Whereas, the Civil Miscellaneous Appeals arise from the two sets of Final Orders of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT). CMA.No.1342 of 2017 has been filed by the department against the order dated 04.07.2016 passed by the CESTAT, in and by which, the Tribunal, after following the decisions of this Court in ***KSJ Metal Impex (P) Ltd v. Under Secretary (CUS.) M.F. (D.R.) [2013 (293) ELT 211 (Mad)]*** *and the Delhi High Court* ***in Principal Commissioner of Customs v. Riso India Pvt. Ltd [2016 (333) ELT 333 (Del)],*** directed the adjudicating authority to calculate interest payable to the respondent(s) for the days of delay in granting the refund and make payment thereof within a month of receipt of the order. On the other hand, CMA Nos.77,82 and 86 of 2021 have been filed against the order of the CESTAT dated 25.07.2017, wherein, the appeals filed by the department were rejected under the litigation policy, considering the monetary limit for filing the same.

4.Thus, the common issue involved in all these appeals is relating to payment of interest on delayed refund of 4% Special Additional Duty in terms of Notification no.102/2007 dated 14.09.2007 to the respondent(s) / assessees in respect of the imported goods.

5.According to the appellants / Revenue, the scheme of refund of 4% Additional Duty of Customs has been notified through an exemption notification no.102/2007-Customs, dated 14.09.2007 issued under section 25(1) of the Customs Act, 1962 subject to fulfilment of certain conditions mentioned therein and hence, the provisions of sections 27 and 27A of the Customs Act, 1962, would not apply to the cases relating to the notification referred to above.

6.However, during the course of hearing, the learned senior panel counsel appearing for the appellants submitted that the issue involved herein has already been decided by the Bombay High Court in ***CMS Info Systems Ltd v. Union of India [2017 (349) ELT 236 (Bom)]***, wherein, after considering the decision of the Delhi High Court in ***M/s.Sony India Ltd case,*** it was categorically held that "the period of limitation as mentioned in the notification dated 14th September, 2007 as amended by the notification dated

1st August 2008 will operate with all the force and therefore, refund will be governed by the limitation as prescribed in the notification". The learned counsel further submitted that though the decision of the Delhi High Court in ***M/s.Sony India Ltd's case*** was challenged by the Revenue by filing Special Leave Petition, the Hon'ble Supreme Court dismissed the said SLP on the ground of limitation, but kept the substantial question of law open and hence, the ruling of the Delhi High Court did not attain finality. It is also fairly submitted that the aforesaid decision of the Bombay High Court in ***CMS Info Systems Ltd's case*** was put to challenge before the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil)No.11646 of 2017 by the assessee, which is now pending consideration.

7.Such being the present position of law, this court, in the given facts and circumstances of the case, sets aside the orders impugned herein and remands the matter to the original authority for fresh consideration of the applications for refund after providing opportunity of hearing to the parties, based on the outcome of the SLP filed against the order passed by the Bombay High Court in ***CMS Info System Limited (supra)***, to be rendered by the Hon'ble Supreme Court.

8.All the appeals are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) **(J.S.N.P., J.)**

25.04.2022

rsh/av

Index:Yes/no
Internet:Yes/No

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and
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WA No. 927 of 2013 etc. batch

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